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SENORX, INC.

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

HOLOGIC, INC., CYTYC CORP., and HOLOGIC L.P., Plaintiffs, v. SENORX, INC., Defendant.	CASE NO.: C08-0133 RMW **DEFENDANT SENORX, INC.'S ANSWER TO AMENDED COMPLAINT** **DEMAND FOR JURY TRIAL** Honorable Ronald M. Whyte

Defendant SenoRx, Inc. ("SenoRx"), through undersigned counsel, answers the Amended Complaint of Plaintiffs Hologic, Inc., Cytyc Corp., and Hologic L.P. (individually and collectively "Plaintiffs") as follows:

ANSWER TO NATURE OF THE ACTION

1. SenoRx admits that in bringing this action, the Plaintiffs purport to seek damages and injunctive relief arising out of SenoRx's alleged infringement of U.S. Patent Nos. 5,913,813; 6,413,204; and 6,482,142 (the "Patents-In-Suit"), and for alleged acts of false advertising. SenoRx denies that it infringes any valid, enforceable claim of any of the Patents-In-Suit, that it has engaged or does engage in false advertising, that the Plaintiffs are entitled to any damages or injunctive relief, and any and all other allegations set forth in paragraph 1 of the Amended Complaint.

2. On information and belief, SenoRx admits the allegations set forth in paragraph 2 of the Amended Complaint.

3. On information and belief, SenoRx admits the allegations set forth in paragraph 3 of the Amended Complaint.

4. On information and belief, SenoRx admits the allegations set forth in paragraph 4 of the Amended Complaint.

5. SenoRx admits the allegations set forth in paragraph 5 of the Amended Complaint.

ANSWER TO JURISDICTION AND VENUE

6. The allegations of paragraph 6 of the Amended Complaint set forth legal conclusions to which no response is required. To the extent that paragraph 6 of the Amended Complaint sets forth factual allegations to which a response is required, SenoRx admits that an action for infringement of a United States Patent may arise under 35 U.S.C. § 281, and that jurisdiction for such an action in this Court may be founded on 28 U.S.C. § 1338(a). SenoRx also admits that jurisdiction in this Court for an action under the Lanham Act, 15 U.S.C. § 1125(a), may be founded on 28 U.S.C. § 1331. SenoRx denies any and all other allegations set forth in paragraph 6 of the Amended Complaint.

7. The allegations of paragraph 7 of the Amended Complaint set forth legal conclusions to which no response is required. To the extent that paragraph 7 of the Amended Complaint sets forth factual allegations to which a response is required, SenoRx denies the allegations set forth in paragraph 7 of the Amended Complaint.

8. The allegations of paragraph 8 of the Amended Complaint set forth legal conclusions to which no response is required. To the extent that paragraph 8 of the Amended Complaint sets forth factual allegations to which a response is required, SenoRx denies that it has committed, or intends to commit, acts of infringement or false advertising in this District, and any and all other allegations set forth in paragraph 8 of the Amended Complaint.

ANSWER TO INTRADISTRICT ASSIGNMENT

9. The allegations of paragraph 9 of the Amended Complaint set forth legal conclusions to which no response is required. To the extent that paragraph 9 of the Amended Complaint sets forth factual allegations to which a response is required, SenoRx admits that this purports to be an intellectual property action that is subject to assignment on a District-wide basis pursuant to Civil Local Rule 3-2(c).

ANSWER TO BACKGROUND

10. SenoRx is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 10 of the Amended Complaint, and on that basis denies the allegations.

11. SenoRx is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 11 of the Amended Complaint, and on that basis denies the allegations.

12. SenoRx is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 12 of the Amended Complaint, and on that basis denies the allegations.

13. SenoRx admits that the term brachytherapy has been used to refer to radiation therapy in which the radiation source is in proximity to the tissue being treated. SenoRx is without knowledge or information sufficient to form a belief as to the truth of the other allegations

set forth in paragraph 13 of the Amended Complaint, and on that basis denies any and all other allegations in that paragraph.

14. SenoRx admits that a 510(k) Summary of Safety and Effectiveness, specifying a device name "MammoSite™ Radiation Therapy System (RTS)," control number K011690, was date-stamped by the FDA on May 6, 2002. SenoRx denies any and all other allegations set forth in paragraph 14 of the Amended Complaint.

15. SenoRx denies the allegations set fort in paragraph 15 of the Amended Complaint.

16. SenoRx admits that the Patents-In-Suit are the subject of this Amended Complaint, but denies that the patents were validly issued and denies any and all other allegations set forth in paragraph 16 of the Amended Complaint.

17. SenoRx admits, on information and belief, that Cytyc Corp. acquired Proxima Therapeutics ("Proxima") in 2005, and that Hologic, Inc. combined with Cytyc Corp. in 2007. SenoRx is without knowledge or information sufficient to form a belief as to the truth of the other allegations set forth in paragraph 17 of the Amended Complaint, and on that basis denies any and all other allegations in that paragraph.

18. SenoRx lacks information sufficient to form a belief as to Hologic's current activities and on that basis denies any and all allegations set forth in paragraph 18 of the Amended Complaint.

19. SenoRx admits that it submitted a premarket notification under section 510(k) of the Food, Drug and Cosmetic Act for a device for implementing breast brachytherapy, specifying the device name "SenoRad Multi-Lumen Balloon Source Applicator for Brachytherapy." The remaining allegations of paragraph 19 of the Amended Complaint set forth legal conclusions to which no response is required. To the extent that paragraph 19 of the Amended Complaint sets forth further factual allegations to which a response is required, SenoRx denies any and all other allegations set forth in paragraph 19 of the Amended Complaint.

20. SenoRx admits that the FDA approved its premarket notification on or about May 18, 2007. The section 510(k) summary (No. K071229), attached as Exhibit D to the Amended Complaint, speaks for itself. SenoRx denies that the MammoSite® Radiation Therapy System is

claimed by the Patents-In-Suit, and denies any and all other allegations set forth in paragraph 20 of the Amended Complaint.

21. SenoRx admits that the MammoSite® Instruction Manual, under the heading Contraindications, states "Do not deliver radiation if the minimum distance from the balloon surface to the skin surface is less than 5 mm; or if the distance from the balloon surface to the skin surface is 5 mm over a continuous length greater than 1 cm on the surface of the skin." To the extent that paragraph 21 of the Amended Complaint sets forth further factual allegations to which a response is required, SenoRx denies any and all other allegations set forth in paragraph 21 of the Amended Complaint.

22. SenoRx admits that the MammoSite® Instruction Manual warns that "[i]maging should verify a minimum distance of 5 mm from balloon surface to skin surface; however, a minimum distance of 7 mm from balloon surface to skin surface is recommended." To the extent that paragraph 22 of the Amended Complaint sets forth further factual allegations to which a response is required, SenoRx denies any and all other allegations set forth in paragraph 22 of the Amended Complaint.

23. SenoRx denies any and all allegations set forth in paragraph 23 of the Amended Complaint.

24. SenoRx admits that it refers to the SenoRad device by, inter alia, the tradename "Contura™ Multi-Lumen Balloon." To the extent that paragraph 24 of the Amended Complaint sets forth further factual allegations to which a response is required, SenoRx denies any and all other allegations set forth in paragraph 24 of the Amended Complaint.

ANSWER TO COUNT ONE – INFRINGEMENT OF U.S. PATENT NO. 5,913,813

25. In response to paragraph 25 of the Amended Complaint, SenoRx hereby incorporates its responses to paragraphs 1 through 24 of the Amended Complaint as if fully set forth herein.

26. SenoRx denies the allegations set forth in paragraph 26 of the Amended Complaint.

27. SenoRx denies the allegations set forth in paragraph 27 of the Amended Complaint.

28. SenoRx denies the allegations set forth in paragraph 28 of the Amended Complaint.

29. SenoRx denies the allegations set forth in paragraph 29 of the Amended Complaint.

30. SenoRx denies the allegations set forth in paragraph 30 of the Amended Complaint.

ANSWER TO COUNT TWO – INFRINGEMENT OF U.S. PATENT NO. 6,413,204

31. In response to paragraph 31 of the Amended Complaint, SenoRx hereby incorporates its responses to paragraphs 1 through 30 of the Amended Complaint as if fully set forth herein.

32. SenoRx denies the allegations set forth in paragraph 32 of the Amended Complaint.

33. SenoRx denies the allegations set forth in paragraph 33 of the Amended Complaint.

34. SenoRx denies the allegations set forth in paragraph 34 of the Amended Complaint.

35. SenoRx denies the allegations set forth in paragraph 35 of the Amended Complaint.

36. SenoRx denies the allegations set forth in paragraph 36 of the Amended Complaint.

ANSWER TO COUNT THREE – INFRINGEMENT OF U.S. PATENT NO. 6,482,142

37. In response to paragraph 37 of the Amended Complaint, SenoRx hereby incorporates its responses to paragraphs 1 through 36 of the Amended Complaint as if fully set forth herein.

38. SenoRx denies the allegations set forth in paragraph 38 of the Amended Complaint.

39. SenoRx denies the allegations set forth in paragraph 39 of the Amended Complaint.

40. SenoRx denies the allegations set forth in paragraph 40 of the Amended Complaint.

41. SenoRx denies the allegations set forth in paragraph 41 of the Amended Complaint.

42. SenoRx denies the allegations set forth in paragraph 42 of the Amended Complaint.

ANSWER TO COUNTS FOUR, FIVE, AND SIX – FEDERAL AND STATE UNFAIR COMPETITION

43. Counts Four, Five, and Six of the Amended Complaint have been dismissed from this lawsuit, and accordingly no response is required for paragraphs 43-82 of the Amended Complaint. To the extent that these paragraphs set forth any allegations to which a response is required, SenoRx denies any and all allegations set forth in paragraphs 43-82 of the Amended Complaint.

ANSWER TO DEMAND FOR JURY TRIAL

44. The allegations of paragraph 83 of the Amended Complaint set forth legal conclusions to which no response is required.

ANSWER TO PRAYER FOR RELIEF

45. The "WHEREFORE" paragraph following paragraph 83 of the Amended Complaint states Plaintiffs' prayer for relief to which no response is required. To the extent a response is required, SenoRx denies the allegations set forth in the "WHEREFORE" paragraph following paragraph 83 of the Amended Complaint and denies that Plaintiffs are entitled to any of the relief requested therein, or to any relief whatsoever.

AFFIRMATIVE DEFENSES

SenoRx sets forth the following affirmative and other defenses. SenoRx does not intend hereby to assume the burden of proof with respect to those matters as to which, pursuant to law, Plaintiffs bear the burden.

FIRST DEFENSE – NONINFRINGEMENT OF U.S. PATENT NO. 5,913,813

46. The manufacture, use, offer to sell, sale, and/or importation of SenoRx's products has not infringed, does not infringe, and will not infringe (either directly, contributorily, or by inducement, or by any theory of equivalency) any valid, enforceable claim of U.S. Patent No. 5,913,813 (the "'813 patent").

SECOND DEFENSE – NONINFRINGEMENT OF U.S. PATENT NO. 6,413,204

47. The manufacture, use, offer to sell, sale, and/or importation of SenoRx's products has not infringed, does not infringe, and will not infringe (either directly, contributorily, or by inducement, or by any theory of equivalency) any valid, enforceable claim of U.S. Patent No. 6,413,204 (the "'204 patent").

THIRD DEFENSE – NONINFRINGEMENT OF U.S. PATENT NO. 6,482,142

48. The manufacture, use, offer to sell, sale, and/or importation of SenoRx's products has not infringed, does not infringe, and will not infringe (either directly, contributorily, or by inducement, or by any theory of equivalency) any valid, enforceable claim of 6,482,142 (the "'142 patent").

FOURTH DEFENSE – INVALIDITY OF U.S. PATENT NO. 5,913,813

49. Each of the claims of the '813 patent is invalid for failure to satisfy the provisions of one or more of sections 101, 102, 103, 112, and/or 116 of Title 35 of the United States Code.

FIFTH DEFENSE – INVALIDITY OF U.S. PATENT NO. 6,413,204

50. Each of the claims of the '204 patent is invalid for failure to satisfy the provisions of one or more of sections 101, 102, 103, 112, and/or 116 of Title 35 of the United States Code.

SIXTH DEFENSE – INVALIDITY OF U.S. PATENT NO. 6,482,142

51. Each of the claims of the '142 patent is invalid for failure to satisfy the provisions of one or more of sections 101, 102, 103, 112, and/or 116 of Title 35 of the United States Code.

SEVENTH DEFENSE – UNENFORCEABILITY OF U.S. PATENT NO. 6,413,204 DUE TO INEQUITABLE CONDUCT ('204 MISREPRESENTATION)

52. Defendant incorporates by reference all of the foregoing allegations and averments of its answer and affirmative defenses.

53. Each of the claims of the '204 patent are unenforceable for inequitable conduct before the United States Patent and Trademark Office ("PTO").

54. The application that led to the issuance of the '204 patent was filed on April 15, 1999. The '204 patent issued on July 2, 2002.

55. The attorneys responsible for prosecuting the application leading to the '204 patent included Thomas J. Engellenner and Ronald E. Cahill, of the firm Nutter, McClennen & Fish LLP (collectively and individually the "'204 prosecuting attorneys").

56. During the examination of the '204 patent, while under a duty of candor to the PTO, one or more of the named inventors, and, on information and belief, the '204 prosecuting attorneys and/or individuals at Proxima responsible for the prosecution of the application, engaged in inequitable conduct with intent to mislead the PTO in an effort to obtain the '204 patent.

57. Proxima, as assignee of the '204 patent, controlled and/or had knowledge of the prosecution of the '204 patent. Plaintiffs are accountable for the material misstatements and omissions made by Proxima, the inventors of the '204 patent, and/or the '204 prosecuting attorneys with intent to deceive the PTO.

58. On or about December 20, 2000, Proxima and the named inventors, through the '204 prosecuting attorneys, made to the PTO the following statement (the "'204 misrepresentation"): "[S]ince compression of the brain tissue surrounding the outer balloon 28B (see Figure 7) might prove detrimental to the health of the patient, Applicant urges that Williams fails to disclose or teach an expandable surface element that is adapted to contact tissue surrounding the resected cavity and conform the tissue to the desired shape of the expandable surface element, as is recited in claims 4 and 28."

59. The "Williams" reference discussed in the portion of the prosecution history quoted in paragraph 58 refers to U.S. Patent No. 5,429,582, naming Dr. Jeffery A. Williams as the inventor (hereinafter the "Williams '582 patent").

60. The Williams '582 patent was assigned to Proxima, a predecessor-in-interest to Plaintiffs, some time prior to December 20, 2000.

61. On or prior to December 20, 2000, one of the named inventors, the prosecuting attorney(s), and/or some other individual with a duty of disclosure knew that devices of the type described in the Williams '582 patent could be adapted to contact tissue surrounding a resected cavity in the brain and adapted to conform the tissue to the desired shape of the expandable surface element.

62. On or prior to December 20, 2000, one of the named inventors, the prosecuting attorney(s), and/or some other individual with a duty of disclosure knew that devices of the type described in the Williams '582 patent were or could be adapted to conform brain tissue surrounding the outer balloon of the device without detriment to the health of a patient.

63. Plaintiffs and/or Plaintiffs' predecessor in interest, Proxima, have represented that the Williams '582 patent covers the GliaSite RTS device.

64. One or more of the inventors of the '204 patent have represented that the Williams '582 patent covers the GliaSite RTS device.

65. The GliaSite RTS device is used in the brain to treat brain tumors.

66. The GliaSite RTS device is adapted to contact tissue surrounding a resected cavity in the brain and adapted to conform the tissue to the desired shape of the outer balloon of the GliaSite RTS.

67. The GliaSite RTS device can be adapted to conform brain tissue surrounding the outer balloon of the device without detriment to the health of the patient.

68. The '204 misrepresentation was intended to mislead the PTO into believing that the Williams '582 patent fails to disclose or teach an expandable surface element that is adapted to contact tissue surrounding the resected cavity and adapted to conform the tissue when in fact it does.

69. The '204 misrepresentation was intended to mislead the PTO into believing that conformance of brain tissue by a device of the type disclosed by the Williams '582 patent would prove detrimental to the health of the patient when in fact it would not.

70. The '204 misrepresentation was known during the examination of the '204 patent to be materially false and misleading.

71. The '204 misrepresentation violated the duty of candor owed to the PTO.

72. The '204 misrepresentation was made with intent to deceive the PTO.

73. Plaintiffs may not enforce the '204 patent due to inequitable conduct during its prosecution.

EIGHTH DEFENSE – UNENFORCEABILITY OF U.S. PATENT NO. 6,482,142 DUE TO INEQUITABLE CONDUCT ('142 MISREPRESENTATIONS)

74. Defendant incorporates by reference all of the foregoing allegations and averments of its answer and affirmative defenses.

75. Each of the claims of the '142 patent are unenforceable for inequitable conduct before the United States Patent and Trademark Office ("PTO").

76. The application that led to the issuance of the '142 patent was filed on December 16, 1999. The '142 patent issued on November 19, 2002.

77. The attorneys responsible for prosecuting the application leading to the '142 patent included Thomas J. Engellenner and Ronald E. Cahill, of the firm Nutter, McClennen & Fish LLP (collectively and individually the "'142 prosecuting attorneys").

78. During the examination of the '142 patent, while under a duty of candor to the PTO, one or more of the named inventors, and, on information and belief, the '142 prosecuting attorneys and/or individuals at Proxima responsible for the prosecution of the application, engaged in inequitable conduct with intent to mislead the PTO in an effort to obtain the '142 patent.

79. Proxima, as assignee of the '142 patent, controlled and/or had knowledge of the prosecution of the '142 patent. Plaintiffs are accountable for the material misstatements and omissions made by Proxima, the inventors, and/or the '142 prosecuting attorneys with intent to deceive the PTO. Plaintiffs may not enforce the '142 patent due to inequitable conduct during its prosecution.

80. On or about December 16, 1999, Proxima, the named inventors, through the '142 prosecuting attorneys, filed the application that led to the '142 patent. The '142 application materially misrepresented the teachings of the Williams '582 patent in order to deceive the PTO examiner into believing that it was not material to the patentability of the '142 patent (the "'142 misrepresentations").

81. The '142 patent is directed to providing an asymmetric radiation dose to tissue through the use of an asymmetrically-placed radiation source.

82. In the application leading to the '142 patent, the named inventors, through the '142 prosecuting attorneys, made to the PTO the following misstatements that were known during the examination of the '142 patent to be materially false and misleading: "Williams provides a catheter having an inflatable balloon at its distal end that defines a distensible reservoir. . . . The balloon is then inflated by injecting a fluid having one or more radionuclides into the distensible reservoir via a lumen in the catheter. The apparatus described in Williams solves some of the problems found when using radioactive seeds for interstitial brachytherapy, but leaves some problems unresolved. The absorbed dose rate at a target point exterior to a radioactive source is inversely proportional to the square of the distance between the radiation source and the target point. As a result, where the radioactive source has sufficient activity to deliver a prescribed dose, say 2 centimeters into the target tissue, the tissue directly adjacent the wall of the distensible reservoir, where the distance to the radioactive source is very small, may still be overly 'hot' to the

point where healthy tissue necrosis may result. . . . It is also desirable, at least in some applications, to provide these advantages while tailoring the radiation dosage to avoid fully dosing sensitive tissue or to reduce the amount of radiation that escapes the patient's body. " '142 patent col. 2: 43-53.

83. This statement was materially misleading in that it implies and states the Williams '582 patent has only a single balloon into which radioactive fluid is placed directly adjacent the tissue, but the Williams '582 patent actually discloses in Figure 7 a device having two balloons, the inner of which contains radioactive fluid, thus providing a space between the radiation source and the tissue.

84. The statement also was materially misleading in that it implies and states the Williams '582 patent does not provide for asymmetric delivery of radiation to tissue, where the Williams '582 patent actually discloses in Figure 7 a device which does deliver asymmetric doses of radiation to tissue.

85. Furthermore, the inventors of the '142 patent, through their attorneys, admitted during prosecution of the '204 patent that the device of Figure 7 of the Williams '582 patent delivered asymmetric doses of radiation to tissue, but did not inform the PTO of this fact during prosecution of the '142 patent.

86. The statements made during the prosecution of the '204 patent that are not consistent with the characterization of the '582 Patent in the Background section of the '142 Patent.

87. The Williams '582 patent is material to the patentability of the '142 patent.

88. The Williams '582 patent was not disclosed to the Patent Office as required by 37 CFR 1.56.

89. The misrepresentations and omissions in the '142 patent application and its prosecution were intended to mislead the PTO.

90. The misrepresentations and omissions in the '142 patent application and its prosecution violated the duty of candor owed to the PTO.

91. Plaintiffs may not enforce the '142 patent due to inequitable conduct during its prosecution.

NINTH DEFENSE – UNENFORCEABILITY OF U.S. PATENT NO. 6,482,142 DUE TO INEQUITABLE CONDUCT ('142 MATERIAL OMISSIONS)

92. Defendant incorporates by reference all of the foregoing allegations and averments of its answer and affirmative defenses.

93. Each of the claims of the '142 patent are unenforceable for inequitable conduct before the United States Patent and Trademark Office ("PTO").

94. The application that led to the issuance of the '142 patent was filed on December 16, 1999. The '142 patent issued on November 19, 2002.

95. The attorneys responsible for prosecuting the application leading to the '142 patent included Thomas J. Engellenner and Ronald E. Cahill, of the firm Nutter, McClennen & Fish LLP (collectively and individually the "'142 prosecuting attorneys").

96. During the examination of the '142 patent, while under a duty of candor to the PTO, one or more of the named inventors, and, on information and belief, the '142 prosecuting attorneys and/or individuals at Proxima responsible for the prosecution of the application, engaged in inequitable conduct with intent to mislead the PTO in an effort to obtain the '142 patent.

97. Proxima, as assignee of the '142 patent, controlled and/or had knowledge of the prosecution of the '142 patent. Plaintiffs are accountable for the material omissions made by Proxima, the inventors, and/or the '142 prosecuting attorneys with intent to deceive the PTO. Plaintiffs may not enforce the '142 patent due to inequitable conduct during its prosecution.

98. During the examination of the '142 patent, while under a duty of candor to the PTO, one or more of the named inventors, and, on information and belief, the '142 prosecuting attorneys had knowledge of material references that deliberately were not disclosed to the PTO ("the '142 concealed references"), in order to deceive the PTO.

99. The '142 concealed references include at least the Williams '582 patent; U.S. Patent No. 5,931,774 ("the '774 patent"); and R. D. Ashpole et al. 2 Clinical Oncology 333-37 (1990) ("Ashpole").

100. The Williams '582 patent, the '774 patent, and Ashpole each are material to the patentability of the '142 patent.

101. The Williams '582 patent, the '774 patent, and Ashpole were omitted from the information disclosure sheets submitted to the PTO during examination of the '142 patent.

102. The Williams '582 patent was known during the examination of the '142 patent by at least the '142 prosecuting attorneys and one or more of the inventors, all of whom owed a duty of candor to the PTO.

103. The '774 patent was known during the examination of the '142 patent by at least the '142 prosecuting attorneys and one or more of the inventors, all of whom owed a duty of candor to the PTO.

104. Ashpole was known during the examination of the '142 patent by at least the '142 prosecuting attorneys and one or more of the inventors, all of whom owed a duty of candor to the PTO.

105. The failure to disclose the Williams '582 patent, the '774 patent, and Ashpole constitutes inequitable conduct upon the PTO. As a result, the '142 patent may not be enforced by Plaintiffs.

DEMAND FOR TRIAL BY JURY

According to Federal Rule of Civil Procedure 38, Defendant SenoRx, Inc. hereby demands a trial by jury of the issues in the attached Answer.

Dated: June 5, 2008

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: /s/ Natalie J. Morgan
Natalie J. Morgan
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Attorneys for Defendant
SENORX, INC.

CERTIFICATE OF SERVICE
U.S. District Court, Northern District of California,
Hologic, Inc. et al. v. SenoRx, Inc.
Case No. C-08-0133 RMW (RS)

I, Janice Wright, declare:

I am and was at the time of the service mentioned in this declaration, employed in the County of San Diego, California. I am over the age of 18 years and not a party to the within action. My business address is 12235 El Camino Real, Ste. 200, San Diego, CA, 92130.

On June 5, 2008, I served a copy(ies) of the following document(s):

DEFENDANT SENORX, INC.'S ANSWER TO AMENDED COMPLAINT DEMAND FOR JURY TRIAL

on the parties to this action by the following means:

Henry C. Su (suh@howrey.com) Katharine L. Altemus (altemusk@howrey.com) HOWREY LLP 1950 University Avenue, 4th Floor East Palo Alto, CA 94303 Telephone: (650) 798-3500 Facsimile: (650) 798-3600	Attorneys for Plaintiffs HOLOGIC, INC. CYTYC CORPORATION and HOLOGIC LP
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☒ (BY MAIL) I placed the sealed envelope(s) for collection and mailing by following the ordinary business practices of Wilson Sonsini Goodrich & Rosati, 12235 El Camino Real, Ste. 200, San Diego, CA. I am readily familiar with WSGR's practice for collecting and processing of correspondence for mailing with the United States Postal Service, said practice being that, in the ordinary course of business, correspondence with postage fully prepaid is deposited with the United States Postal Service the same day as it is placed for collection.

☒ (BY ELECTRONIC MAIL) I caused such document(s) to be sent via electronic mail (email) to the above listed names and email addresses.

☐ (BY PERSONAL SERVICE) I caused to be delivered by hand to the addressee(s) noted above. I delivered to an authorized courier or driver to be delivered on the same date. A proof of service signed by the authorized courier will be filed with the court upon request.

☐ (BY OVERNIGHT DELIVERY) I placed the sealed envelope(s) or package(s), to the addressee(s) noted above, designated by the express service carrier for collection and overnight delivery by following the ordinary business practices of Wilson Sonsini Goodrich & Rosati, 12235 El Camino Real, Ste. 200, San Diego, CA. I am readily familiar with WSGR's practice for collecting and processing of correspondence for

overnight delivery, said practice being that, in the ordinary course of business, correspondence for overnight delivery is deposited with delivery fees paid or provided for at the carrier's express service offices for next-day delivery the same day as the correspondence is placed for collection.

☐ (BY FACSIMILE) I caused to be transmitted by facsimile machine (number of sending facsimile machine is (858) 350-2399 at the time stated on the attached transmission report(s) by sending the documents(s) to (see above). The facsimile transmission(s) was/were reported as complete and without error.

☒ (BY CM/ECF) I caused such document(s) to be sent via electronic mail through the Case Management/Electronic Case File system with the U.S. District Court for the Northern District of California.

I declare under penalty of perjury under the laws of the United States that the above is true and correct, and that this declaration was executed on June 5, 2008.

Janice Wright

Janice Wright